



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1996

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR96-2033

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101546.

The City of Austin (the "city") received an open records request for "former Austin Police Department Jimmy Cardenas' prior disciplinary action record." You assert that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted documents.

Specifically, you assert that because the former police officer has been arrested on felony criminal charges that are pending in Travis County, and the requested documents relate to the prosecution of those charges, the prior disciplinary records of the officer should be withheld from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. You have also provided to our office a letter from Assistant District Attorney Howard F. Meyer, which states that "Officer Cardenas has been arrested on felony charges, and the city should "not be compelled to release th[e] documents while charges against Cardenas are pending."

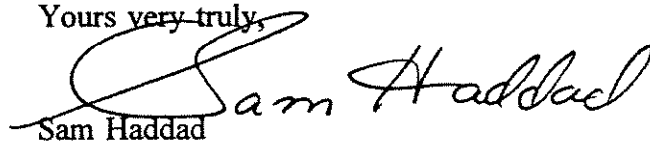
¹ We understand that Austin is a civil service city subject to section 143.089 of the Local Government Code. In the case at hand, the information submitted to our office concerns conduct that resulted in disciplinary action. Such records are subject to release under chapter 552 of the Government Code, unless an exception to disclosure applies. See Local Gov't Code §§ 143.089(a)-(f); Open Records Decision No. 562 (1990) at 6.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In reviewing the requestor's request letter, it is clear that the only information sought consists of the "prior disciplinary action record." Furthermore, the prior disciplinary records appear to involve only administrative or personnel matters and they are not the type of investigation that section 552.108 was designed to shield from public exposure.² You do not claim, nor is it apparent from the face of the submitted records, that the prior disciplinary actions were criminal in nature. Where no criminal investigation or prosecution results from an investigation for alleged misconduct, section 552.108 is inapplicable. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Since the records at issue do not come within the purview of section 552.108 of the Government Code, we conclude that the requested information may not be withheld under this section.

We next address your assertion that section 552.103 of the Government Code excepts the submitted information from required public disclosure. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance, we do not believe that you have made the requisite showing that the prior disciplinary records relate to the pending criminal charge. We therefore conclude that the requested records may not be withheld under section 552.103 of the Government Code. As none of exceptions considered apply to the requested information, you must release the submitted records.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/cbh

² Additionally, we note that the requested information does not appear to relate to the investigation and prosecution of the pending criminal charges against the former officer.

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Ref.: ID# 101546

Enclosures: Submitted documents

cc: Ms. Susan Risdon
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(w/o enclosures)